Clean Network, Inc. d/b/a New Method Cleaners, Inc./Clean Network, Inc., Debtor-in-Possession *and* Local No. 284, Hospital Services, Laundry Cleaners and Miscellaneous Workers, AFL–CIO. Case 22–CA–19708

June 27, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS DEVANEY AND BROWNING

Upon a charge filed by Local No. 284, Hospital Services, Laundry Cleaners and Miscellaneous Workers, AFL–CIO (the Union) on February 4, 1994, the General Counsel of the National Labor Relations Board issued a complaint on March 21, 1994, against Clean Network, Inc. d/b/a New Method Cleaners, Inc./Clean Network, Inc., Debtor-in-Possession (the Respondent), alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On May 16, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On May 18, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated April 5, 1994, notified the Respondent that unless an answer were received by April 12, 1994 (subsequently extended to April 26, 1994), a Motion for Summary Judgment would be filed. To date, no answer has been filed.

In the absence of good cause being shown for the failure to file a timely answer,[1] we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all times material the Respondent, a corporation, with an office and place of business in Trenton, New Jersey, has been engaged in the operation of a dry-cleaning business. During the 12-month period preceding the issuance of the complaint, the Respondent, in the course and conduct of its business operations, derived gross revenues in excess of $500,000 and purchased supplies in excess of $50,000 directly from suppliers located outside the State of New Jersey. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All inside employees, excluding supervisors, foremen, foreladies, garage employees, office, clerical, power house and maintenance employees.

At all times material, the Union has been the designated exclusive collective-bargaining representative of the unit and the Union has been recognized as such representative by the Respondent. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period of December 1, 1991, to November 30, 1993, which was extended to December 31, 1993.

At all times material, the Union, by virtue of Section 9(a) of the Act, has been and is the exclusive representative of the employees in the unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

[1] On May 31, 1994, following issuance of the Board's Notice to Show Cause, the Board received a letter, dated May 27, 1994, from a Michael A. Zindler, stating that he was counsel to ''Clean Network, Inc., a Debtor in a Chapter 11 proceeding,'' and contending that the General Counsel's motion should be dismissed because he had not been served with the moving papers and because the bankruptcy court had not granted relief from the automatic stay. Zindler does not assert, however, and the General Counsel's response to his letter denies, that he ever filed a written notice of appearance pursuant to Sec. 102.113(b) of the Board's Rules. Further, it is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain or process an unfair labor practice case to its final disposition. Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See *Phoenix Co.*, 274 NLRB 995 (1985), and cases cited therein. Accordingly, we find that neither the absence of service on Zindler, nor the institution of bankruptcy proceedings, provides cause for denying the General Counsel's motion.

Since on or about September 1, 1993, and continuously thereafter, the Respondent has unilaterally failed to continue in effect all the terms and conditions of the collective-bargaining agreement by failing to contribute to the Union's welfare and pension fund, and by failing to deduct union dues from employees' wages and remit union dues to the Union.

Although the terms and conditions of employment described above are mandatory subjects for the purposes of collective bargaining, the Respondent engaged in the conduct described above prior to December 31, 1993, without the Union's consent, and has engaged in the conduct described above since January 1, 1994, without bargaining with the Union.

On December 28, 1993, the Respondent and the Union met for the purposes of negotiating a successor contract regarding wages, hours, and other terms and conditions of employment of the unit.

On December 28, 1993, the Respondent engaged in bad-faith bargaining by presenting the Union with a take-it-or-leave-it proposal regarding the elimination of the welfare and pension funds.

Since on or about January 1, 1994, the Respondent has failed and refused to meet with the Union for the purposes of collective bargaining.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused and is failing and refusing to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the unit, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5), Section 8(d), and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing, since September 1, 1993, to make contractually required contributions to the welfare and pension funds, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co*., 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, having found that the Respondent has violated Section 8(a)(5) and (1) by failing, since September 1, 1993, to deduct union dues from the wages of employees and to remit the dues to the Union as required by the 1991–1993 agreement, we shall order the Respondent to reimburse the Union for its failure to do so, with interest as prescribed in *New Horizons for the Retarded*, supra.

Finally, having found that the Respondent, on December 28, 1993, engaged in bad-faith bargaining over a successor contract, and has failed and refused, since January 1, 1994, to meet with the Union for collective-bargaining purposes, we shall order the Respondent to meet and bargain in good faith with the Union with respect to the unit employees' wages, hours, and other terms and conditions of employment.

ORDER

The National Labor Relations Board orders that the Respondent, Clean Network, Inc. d/b/a New Method Cleaners, Inc./Clean Network, Inc., Debtor-in-Possession, Trenton, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to honor the terms of the 1991–1993 collective-bargaining agreement with Local No. 284, Hospital Services, Laundry Cleaners and Miscellaneous Workers, AFL–CIO, covering the employees in the unit described below, by failing to make contractually required contributions to the welfare and pension funds, and by failing to deduct union dues from the wages of employees who have executed dues-checkoff authorizations and to remit the dues to the Union:

> All inside employees, excluding supervisors, foremen, foreladies, garage employees, office, clerical, power house and maintenance employees.

(b) Failing and refusing to meet and bargain in good faith with the Union as the exclusive bargaining representative of the unit employees by presenting the Union during negotiations over a successor contract with a take-it-or-leave-it proposal regarding the elimination of the welfare and pension funds, and by failing and refusing to meet with the Union for collective-bargaining purposes.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole the unit employees by making all contractually required contributions to the welfare and pension funds which have not been made since September 1, 1993, and reimbursing the unit employees

for their expenses ensuing from its failure to make such contributions, with interest, as set forth in the remedy section of this decision.

(b) Reimburse the Union for its failure since September 1, 1993, to deduct union dues from employees' wages and remit the dues to the Union as required by the 1991–1993 agreement, with interest, as set forth in the remedy section of this decision.

(c) On request, meet and bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit employees with respect to their wages, hours, and other terms and conditions of employment.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility in Trenton, New Jersey, copies of the attached notice marked ''Appendix.''[2] Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to honor the terms of the 1991–1993 collective-bargaining agreement with Local No. 284, Hospital Services, Laundry Cleaners and Miscellaneous Workers, AFL–CIO, covering the employees in the unit described below, by failing to make contractually required contributions to the welfare and pension funds, and failing to deduct union dues from the wages of employees who have executed dues-checkoff authorizations and to remit the dues to the Union:

> All inside employees, excluding supervisors, foremen, foreladies, garage employees, office, clerical, power house and maintenance employees.

WE WILL NOT fail and refuse to meet and bargain in good faith with the Union by presenting the Union during negotiations over a successor contract with a take-it-or-leave-it proposal regarding the elimination of the welfare and pension funds, and by failing to meet with the Union for collective-bargaining purposes.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole the unit employees by making all contractually required contributions to the welfare and pension funds that we have failed to make since September 1, 1993, and by reimbursing the employees for any expenses ensuing from our failure to make such contributions, with interest.

WE WILL reimburse the Union for all dues that we have failed to deduct from employees' wages and remit to the Union since September 1, 1993, as required by the 1991–1993 agreement, with interest.

WE WILL, on request, meet and bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit employees with respect to their wages, hours, and other terms and conditions of employment.

> CLEAN NETWORK, INC. D/B/A NEW METHOD CLEANERS, INC./CLEAN NETWORK, INC., DEBTOR-IN-POSSESSION

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''